IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION. 78 OF 2006

Joy Nibaran Bishawas @ Jayant Sarkar .... Applicant

versus

The State of Maharashtra & ors. ... Respondents.

Mrs. P.P. Kakade for the appellant.

Miss S.D. Shinde APP for State.

CORAM; V.M. KANADE, J.

DATED; JANUARY 27, 2006.

P.C:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant is seeking modification of the order passed by the Sessions Court. The applicant was arrested in connection with an offence which was registered in Sahakarnagar police station in connection with C.R.No. 370 of 2005 for the offences punishable under secs. 366(A), 368, 372, 376, 506 read with 34 or IPC and under various sections of PITA Act. The Sessions Court while directing that the applicant should be released on bail, imposed certain conditions. The Sessions Court has directed that the applicant should be released on bail in the sunm of Rs. one lac

with one or two sureties in the like amount, and further imposed a condition that over and above the two sureties, which would be provided by the applicant, he should give cash security for an amount of Rs. one lac.

3. The learned counsel appearing on behalf of the applicant takes objection to the additional condition which is imposed by the trial court on the ground that courts are not permitted to impose such additional condition of providing cash security. In support of thsh submission the learned counsel relied on a judgment of the Supreme Court in the case of **Keshab Narayan Banerjee and another, appellants Vs. The State of Bihar respondent, reported in AIR 1985 S.C. page 1666,** wherein the Supreme Court has held that the additional security which was imposed for furnishing cash security of Rs. one lac, amounts to denial of bail and therefore such condition may be relaxed.

4. The learned counsel further relied on a judgment of Madras High Court in the case of **Alluvdin, petitioner Vs. Inspector of Police, Vandhavasi Police Station, respondent, reported in 2001 Cri.L.J. page 2672** wherein the Single Bench of Madras High Court has held that the imposition of deposit of cash security along with execution of bond with two sureties was not

permissible.

5. The learned APP appearing on behalf of the State on the other hand submitted that the applicant is not a resident of State of Maharashtra and he is a permanent resident of State of Bengal and if the applicant is released on bail, he is likely to abscond and therefore in these circumstances, the Sessions Court was justified in granting additional condition which was imposed in order to secure presence of the present applicant.

6. The learned APP further invited my attention to the various allegations which was made against the present applicant which indicated that the applicant was involved in a racket and the allegations made against him in the present complaint were also quite serious.

7. I have perused the order passed by the Sessions Court. It is settled position in law that while granting bail the subordinate courts are expected to follow the provisions which are laid down in Chapter 33 of the Cr.P.C. If the court is satisfied that the applicant is entitled to be released on bail, certain conditions are to be imposed which are to be commensurate with the provisions of section 441 of the Cr.P.C. It is the discretion of the Court either to

impose cash security or direct the accused to furnish sureties.

8. However, it has been held by the Apex court as far back as in the case of **Motiram Va. State of M.P. reported in 1978 S.C. page 1594** that while imposing conditions for granting bail to the applicant, such conditions should not be imposed, which are either inherently impossible to perform or which the applicant is financially or otherwise not in a position to fulfil. In the present case, it is no doubt true that the offences with which the present applicant has allegedly committed, are very serious, yet the Sessions Court after passing reasoned order came to the conclusion that the applicant was entitled to be released on bail. The Sessions court has further observed that there was no evidence to indicate that the applicant had committed rape on the victim girl. After having come to this conclusion, in my view, the further condition of imposing and directing him to furnish cash security of Rs. one lac is not only exessive but is also illegal. The Supreme Court in the case of **Keshab Narayan Banerjee (Supra)** held that imposition of an additional condition practically amounts to denial of bail and in the said case therefore, it set aside and quashed the said condition. I am also in agreement with the view taken

by the Madras High Court in the case of **Alluvdin (supra).** It will be profitable to consider the observations made by the learned Single Judge in para 3 of the said judgment which read as under:

> *"While granting bail under Chapter 33 of Cr.P.C., the provisions found therein have to be scrupulously followed by the Subordinate Courts. Section 441 Cr.P.C. reads that before any person is released on bail or released on his own bond, a bond for such sum of money as the court thinks sufficient shall be executed by such person. Section 441 does not speak about deposit of any cash security. Only in certain contingencies, where the accused is unable to secure sureties for his release, he is permitted to deposit a sum of money or Government promissory Note as the court may fix in lieu of executing such bond, under section 445 Cr.P.C. Therefore, imposing deposit of cash security along with execution of bond with two sureties is not permissible under law. Thus, the trial court as well as the revisional court have contravened the provisions enshrined under section 445 of the Cr.P.C. and on that sole ground, the orders passed by both the courts*

are liable to be set aside, in so far as the imposition of deposit of amount of Rs. 5,000/- by way of cash security is concerned."

9. The Supreme Court in Motiram's case supra also has observed as under:

"Sec. 445 suggests, especially read with the marginal note, that deposit of money will do duty for bond 'with or without sureties'. Sec.441(1) of the Code may appear to be a stumbling block in the way of the liberal interpretation of bail as covering own bond with and without sureties. Superficially viewed, it uses the words 'bail' and 'own bond' as antithetical, if the reading is literal. Incisively understood, S./ 441(1) provides for both the bond of the accused and the undertaking of the surety being conditioned in the manner mentioned in the sub-section. To read 'bail' as including only cases of release with sureties will stultify the sub-section; for then, an accused released on his own bond without bail, i.e. surety, cannot be conditioned to

attend at the appointed place. Sec. 441 (2) uses the word 'bail' to include 'own bond' loosely as meaning one or the other or both. Moreover, an accused in judicial custody, actual or potential, may be released by the court to further the ends of justice and nothing in Sec. 441 (1) compels a contrary meaning.

Sec. 441(2) and (3) use the word 'bail' generically because the expression is intended to cover bond with or without sureties."

10. In these circumstances, in my view the additional condition imposed by the Sessions Court is not only excessive but is also clearly illegal, considering the ratio of the judgment, which are mentioned hereinabove.

11. In the result, the order passed by the Sessions Court is modified and the condition imposed by the Sessions Court of directing the applicant to furnish cash security of Rs. one lac is set aside. However the applicant shall furnish two local sureties in the sum of Rs. one lac. The applicant also shall furnish his permanent residence in the State of West Bengal.

It is submitted that the applicant is presently residing at Pune and accordingly after his release, he shall report to Sahakarnagar police station twice in a month.

12. Application is disposed of in the above terms.

...